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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re SAMUEL A., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B219566
(Super. Ct. No. 2009011383)
(Ventura County)

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL A.,

Defendant and Appellant.

Samuel A. appeals from the disposition and orders of the juvenile court in which the court denied his motion to suppress evidence, sustained a petition charging him with misdemeanor possession of a locking-blade knife on campus (Pen. Code, § 626.10, subd. (a))¹ and declared him a ward of the court. (Welf. & Inst. Code, § 602.) We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTUAL AND PROCEDURAL BACKGROUND

On a November evening in 2008, Hueneme High School resource officer Brian Bishop detained Samuel A. and searched him at the perimeter of campus just after a football game ended. Bishop found a locking-blade knife in Samuel's pocket.

(§ 626.10, subd. (a).)² Bishop and Samuel gave conflicting testimony about the events that led to the search. Officer Bishop testified that he detained Samuel because he suspected that Samuel was returning to the football field to take part in a fight, and that Samuel consented to the patdown search. Samuel testified that he was only heading back to campus to get a ride home, and that he did not consent to the search.

Bishop testified that on November 7, 2008, he had been patrolling the school all day. In the evening, he was assigned to patrol a football game. He patrolled the inside perimeter of the field and the stands. As a school resource officer, his duties include patrolling the campus during normal school hours and during after school functions such as dances and sporting events.

Toward the end of the game, Bishop went on his patrol bicycle to an intersection at the corner of campus through which most people leave football games. He went there to watch for anyone who might be heading back into the football field for a fight. The school has a history of fighting after football games, and officers had received a tip from an anonymous source that a particular student, who was "known to be carrying a gun by lots of informants," was going to start a fight with someone after this game.³

At about 9:30 p.m., when the game ended, Bishop saw Samuel and a companion, Alvaro N., running toward the campus gates from a house about two doors

² Possession of a locking-blade knife on school property is a public offense. (§ 626.10, subd. (a). For purposes of section 626, a "school" includes a public right-of-way situated immediately adjacent to school property. (§ 626, subd. (a).)

³ Bishop's written report did not mention this tip, and stated that he patrolled the area because of a history of fights after football games.

away. They were looking around and talking back and forth. They ran as they crossed the street and slowed to a jog or fast walk on the sidewalk.

Bishop was suspicious because the boys were moving fast towards the game when most people were trying to leave. Bishop had seen both boys in the stands earlier. Students are not allowed back through the gates to the field once a game is over. Bishop knew from experience that people often come back at the end of games to start fights.

Bishop testified that he approached the boys on his bicycle. Samuel was in a dirt area that runs between the sidewalk and the school fence, east of the main gate. It is school property. Samuel did not respond to Bishop's greeting "in a normal fashion." Samuel grunted and kept walking; normally he says hello to Bishop. Alvaro stopped and talked with Bishop. Bishop told Alvaro to catch up to Samuel. When he did, Bishop stopped them both. Bishop asked Samuel why he was going back to the football game. Samuel said he was waiting for his mom to give him a ride home. Bishop asked why Samuel did not just wait for her at the house where he had been. Samuel said his mother was going to pick him up from the game.

Bishop testified that he asked Samuel whether he "had anything on him that he shouldn't have" and Samuel said he did not. Bishop asked if he "could check," and Samuel said that he could. Bishop patted Samuel down and found two padlocks and a locking-blade knife in his pockets. Bishop knew from experience that kids use padlocks in fights, cupping the locks in their hands. Less than five minutes had passed from the initial contact to the patdown.

Samuel testified that he was supposed to meet his sister outside the school after the game to get a ride or walk home. He had walked to the game and his sister had been dropped off by their mother. During the game, Samuel left to have pizza at a friend's house. The friend's house was blocks away from school, not two doors away. On their way back to campus, he and Alvaro were jogging because the game had ended early and he was late to meet his sister.

Samuel testified that when they were walking down the sidewalk looking for his sister, Bishop approached them on his bike. Bishop pointed to a dirt area and told Samuel to go there. Samuel did not comply at first because he was late to meet his sister. Then Bishop told him and Alvaro to stop and put their hands up, which they did. Bishop had not asked them any questions.

According to Samuel, Bishop grabbed Alvaro and patted him down. Then Bishop tried to grab Samuel, but Samuel pulled away. Samuel said, "Why are you grabbing me? I'm not on probation, it's not curfew, I'm not doing nothing wrong." Samuel testified that he told Bishop, "You can't search me," but Bishop grabbed Samuel's forearm or wrist, told him to put his hands behind his head, and searched him. Bishop had not asked Samuel where he was going, what he was doing, whether he had anything he should not have, or whether it was alright to check.

Alvaro also testified. He partially corroborated Samuel's testimony, but was not in a position to hear whether Samuel consented to be searched. Alvaro testified that he and Samuel were walking back to the campus to meet Samuel's sister and that they were going to either call Samuel's mother for a ride or walk home. When they learned the game was over, they sped up. Bishop came up behind them on the sidewalk. They stepped aside to make way for him and kept walking. Bishop came around in front of them, and told them to separate. Bishop told Samuel to move to the dirt and he told Alvaro to sit on the curb. That was the first thing Bishop had said to them. Alvaro did not hear what Bishop said to Samuel before he searched him and Alvaro was facing away during the search. While he sat on the curb, there were people "at the gate but not around us," "[u]ntil [Samuel's] sister [was], like, coming towards us." "[W]hen he handcuffed Sam, that's when Samuel's sister came[.]"

Samuel offered the testimony of his sister and a friend named Abraham N. The juvenile court excluded their testimony as cumulative and irrelevant. Defense counsel represented that the sister "came upon the scene during the search" and that Abraham arrived "towards the end of the interaction with the officer [Bishop]." Counsel represented that the sister could corroborate "how they got to the game, how they were

going to get back to the game" and "that she came upon the scene during the search." Counsel represented that Abraham's testimony would corroborate the testimony of Samuel and Alvaro and "is relevan[t] to the issue of the search and whether there was consent."

The court denied Samuel's motion to suppress and sustained the petition. The trial court found that, based on the totality of the circumstances, the "detention and subsequent search were justified by the officer." The court stated that the incident occurred on high school grounds, during a high school sporting event where students were "the primary focus of th[e] activity," that Bishop was a school public resource officer and contacted and recognized Samuel as a student, that Bishop contacted the students as part of his ordinary duties as a school resource officer after his suspicions were raised by the fact that they were racing toward the game, after it was over, and there was a history of fights starting after football games. The court stated that there was a "brief encounter to find out what was going on," that lasted fewer than five minutes. With respect to the search, the court stated, "The officer asked them to search. He indicated the minor did not oppose the search."

DISCUSSION

Motion to Suppress

Appellant contends that the detention and the search violated his Fourth Amendment right to be free from unreasonable search and seizure under *Terry v. Ohio* (1968) 392 U.S. 1 and *Illinois v. Gates* (1983) 462 U.S. 213 because Officer Bishop did not have reasonable, articulable suspicion that criminal activity was afoot or that Samuel was armed and dangerous. We reject the contention because substantial evidence supports the juvenile court's implied findings that the on-campus detention was not arbitrary, capricious or for purposes of harassment, therefore complying with the constitutional standard for an on-campus detention by a school official pursuant to *In re Randy G.* (2001) 26 Cal.4th 556, 567, and the subsequent search was conducted with appellant's consent.

We review the evidence in the light most favorable to the juvenile court's ruling on a motion to suppress. (*In re William V.* (2003) 111 Cal.App.4th 1464, 1468.) "We must uphold those express or implied findings of fact by the trial court which are supported by substantial evidence and independently determine whether the facts support the court's legal conclusions. [Citation.]" (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1738-1739.)

In the community at large, a law enforcement officer may only detain a person if the officer has a reasonable, articulable suspicion that criminal activity is afoot, and may only pat that person down for weapons if the officer has a reasonable, articulable suspicion that the person is armed and dangerous. (*Terry v. Ohio, supra*, 392 U.S. at pp. 30-31.)⁴ But on a school campus, less is constitutionally required because a student's expectations of privacy and liberty are diminished at school, and because school administrators have a competing interest in maintaining discipline and providing a safe environment for students and staff. (*In re Randy G., supra*, 26 Cal.4th at p. 567; *In re Cody S.* (2004) 121 Cal.App.4th 86, 91.)

A school official may detain a student for questioning on campus, without reasonable suspicion, so long as the detention is not arbitrary, capricious, or for the purpose of harassment. (*In re Randy G., supra*, 26 Cal.4th at p. 565.) A school official may search a student's person and personal effects based on "a reasonable suspicion that the search will disclose evidence that the student is violating or has violated the law or a school rule." (*In re Cody S., supra*, 121 Cal.App.4th at p. 91.) For purposes of Fourth Amendment analysis, "school officials" include police officers such as Bishop who are assigned to high schools as resource officers. (*In re William V., supra*, 111 Cal.App.4th at p. 1471.)

Here, the detention of Samuel was lawful under the *In re Randy G.* standard. Substantial evidence supported the juvenile court's express findings that

⁴ The officer must be able to point to specific articulable facts which, together with rational inferences, warrant the intrusion. (*Id.* at p. 21) Neither a hunch nor subjective good faith is sufficient. (*Id.* at pp. 21-22.)

Bishop was acting as a school official and that the detention occurred on school property and supported the court's implied finding that the detention was neither arbitrary, capricious or for the purpose of harassment. Bishop testified that he was assigned as a school resource officer whose duties included securing high school football events. He testified that the detention occurred on a strip of dirt that is school property, between the field's fence and the sidewalk. He testified that he detained Samuel for the purpose of determining whether he was on his way to fight, and that he did so based on the history of fights after football games, the tip about a planned fight, and Samuel's hasty approach toward the football field when the game was over and most people were leaving.

It is immaterial whether these facts supplied Bishop with a reasonable, articulable suspicion that Samuel was armed and dangerous sufficient to justify a patdown search because there was substantial evidence to support the juvenile court's implied finding that Samuel consented to the search. Bishop testified that Samuel said he could "check" whether Samuel had anything he should not have. Samuel denied this, but we must defer to the trial court's assessment of his credibility and its resolution of the conflicting testimony. (*People v. Woods* (1999) 21 Cal.4th 668, 673.) The juvenile court did not err when it denied Samuel's motion to suppress.

Exclusion of Witness Testimony

Samuel contends that the court prejudicially erred when it excluded the testimony of Abraham because Abraham was a percipient witness on the issue of consent, and consent was an issue on which conflicting testimony had been presented and which the court resolved against Samuel. We conclude that the court did not abuse its discretion when it excluded Abraham's testimony.

A trial court has discretion to exclude relevant evidence when its probative value is substantially outweighed by the risk of undue influence, confusion or undue consumption of time. (Evid. Code, § 352.) A juvenile court has discretion to exclude cumulative evidence or time-consuming evidence that is of marginal probative value. (*In re Romeo C.* (1995) 33 Cal.App.4th 1838, 1844.) We review a court's exclusion of

evidence for abuse of discretion and will not disturb it unless it exceeds the bounds of reason. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.)

Here, the juvenile court could reasonably conclude from the offer of proof and the preceding testimony that Abraham's testimony would be cumulative and of little probative value. The court had already heard Samuel's testimony that he did not consent to the search and Bishop searched him anyway. The court could reasonably have understood the proffer to mean that Abraham arrived after the search was underway. The court had heard Alvaro's testimony that no one else was near when Bishop took Samuel aside and that the first person to arrive was Samuel's sister. Defense counsel represented that the sister arrived "during the search," and that Abraham "was present towards the end of the interaction with the officer [Bishop]." If Abraham arrived towards the end of the interaction with Bishop, his testimony would have no relevance to the initial detention and would have marginal, if any, relevance to the issue of consent. Counsel represented that Abraham's testimony would be consistent with that of Alvaro's and Samuel's. The court did not exceed the bounds of reason when it concluded that Abraham's testimony "would be cumulative and does not really have much relevance."

DISPOSITION

The disposition and orders appealed from are affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

YEGAN, Acting P.J.

PERREN, J.

Manuel J. Covarrubias, Judge
Superior Court County of Ventura

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